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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

**Re: WC Docket No. 21-450, Affordable Connectivity Program
WC Docket No. 20-445, Emergency Broadband Benefit Program**

Dear Ms. Dortch:

On November 29, 2021, Steve Morris of NCTA – The Internet & Television Association (NCTA), Howard Symons of Jenner & Block (on behalf of NCTA), Beth Choroser of Comcast, Christine Sanquist of Charter Communications, and Jennifer Prime of Cox Enterprises, Inc. met with Greg Watson, Policy Advisor to Commissioner Brendan Carr, to discuss the Affordable Connectivity Program (ACP) and the Emergency Broadband Benefit (EBB) program.¹

In the meeting, we explained that NCTA's members look forward to participating in the ACP and that we share the Commission's interest in ensuring a smooth transition for consumers from the EBB program to ACP. It will be critical to the success of the ACP that existing EBB customers do not lose their broadband service due to issues with the transition from one program to another. In particular, we discussed the following issues:

1. Notice and Opt-out. The *Public Notice* proposes requiring all households seeking to participate in ACP, including EBB-enrolled households that are eligible for ACP, to opt-in or affirmatively request enrollment in ACP.² NCTA has serious concerns about this proposal as to existing EBB-enrolled customers because it could lead to a negative experience for many customers, including a significant risk that they will be disconnected or experience bill shock associated with lost subsidies, in direct contravention of the goals of the ACP.

We explained that the experience of many service providers is that consumers often will not respond to opt-in solicitations even when a provider gives numerous reminders and opting in

¹ *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, Public Notice, WC Docket No. 21-450, DA 21-1453 (rel. Nov. 18, 2021) (*Public Notice*).

² *Id.* at ¶ 122.

would yield significant benefits to the consumer. For example, only a de minimis percentage of customers in one provider's sponsored service program for K-12 students opted in when necessary to retain broadband service. Similarly, another provider noted that substantially less than half of customers opt-in to receive free equipment necessary to receive faster speeds after a network upgrade. Based on these examples, we are deeply concerned that existing EBB customers will not provide their opt-in consent to continue to receive benefits via ACP even when they may experience negative consequences from loss of the benefit. A customer's failure to opt-in would jeopardize continuity of receiving the benefit, could result in the loss of broadband service, and would undermine the stated goals of promoting an "orderly transition" and minimizing administrative burdens on participating households.³

Furthermore, we explained that many providers already obtained customers' opt-in consent to continue receiving service at the providers' standard rates, terms, and conditions after the EBB program ends and the benefit is eliminated. To the extent these customers fail to opt into ACP, which we know from experience will happen for many customers, then these customers will lose the benefit of ACP and their bill will automatically increase to the non-subsidized rate for the service they are receiving under EBB, even though they are eligible to receive the ACP benefit.

2. Implementation Flexibility. In the meetings, NCTA explained that many implementation issues will take more time than the ACP start date, particularly since the Commission is unlikely to adopt final rules before December 31, 2021. For example, the *Public Notice* seeks comment on service provider notice requirements for EBB-enrolled households that transition to the ACP and would experience a change in their benefit level.⁴ Providers will need sufficient notice from the Commission about the timing and content of these notices before they can be sent to customers. Providers also will need flexibility because billing system modifications require development work that is not possible in a compressed timeframe, and this situation is exacerbated by the need to run both programs simultaneously for some period. Details regarding a variety of other obligations, such as the requirement to apply the benefit to any of a participating provider's internet service offerings at the same terms available to non-eligible households, also will need to be addressed by the Commission before providers can ensure compliance.

3. Substantial loss of income households. As explained in the *Public Notice*, households who qualified for the EBB program under the "substantial loss of income" criteria may not be eligible for ACP unless they can demonstrate that they qualify under one of the ACP eligibility criteria.⁵ In the meeting, we explained that, for providers that relied on the National Verifier to verify the eligibility of a household who qualified for EBB pursuant to the loss of income criteria, USAC is better positioned than providers to identify these households. Accordingly, we suggested that USAC should be responsible for (1) providing notice to these consumers that they will lose the benefit unless they qualify through the ACP criteria; (2) handling their re-

³ *Id.*

⁴ *Id.* at ¶ 124.

⁵ *Id.* at ¶¶ 30, 43.

verification; and (3) sending a de-enrollment notice to providers if a consumer is found to be ineligible. We noted that this approach would be consistent with the preliminary guidance order released by the Wireline Competition Bureau on November 26, 2021.⁶

4. Grandfathered plans. NCTA requested that the Commission interpret the requirement for providers to allow an eligible household to apply the benefit to “any internet service offering of the participating provider at the same terms available to households that are not eligible households” as the current offerings of the provider.⁷ We explained that internet service “offerings” typically only include the plans currently available to new customers at any given time; legacy plans that are no longer offered to new customers do not fall in this category, even if some existing customers may be taking service under those plans. Consistent with the statutory language, current provider offerings should be available under the ACP, while legacy plans should be available only if the provider chooses to make them available. If the Commission nonetheless interprets this statutory language to include certain types of grandfathered plans, providers will need time to implement this requirement

Respectfully submitted,

/s/ **Steven F. Morris**

Steven F. Morris

cc: G. Watson

⁶ See *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, DA 21-1477 (rel. Nov. 26, 2021), ¶ 13 (“[W]e will rely on USAC’s resources as much as possible to complete these reverifications.”).

⁷ *Public Notice* at ¶¶ 15, 53, 55.